

REMARKS

Claims 23-28 and 35 remain pending in the above-identified application.

Applicants believe there is a fee of \$450 due for a two-month extension of time and are submitting payment via the electronic payment process. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 19-3140.

Claims 23-25

Applicants respectfully request reconsideration of the rejection of claims 23-25 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,093,503 (Isoyama). Claims 23-25 recite a method of producing a positive electrode active material for a non-aqueous electrolyte cell including sequential steps of (1) mixing ingredients of a lithium composite manganese oxide, (2) molding the mixture under pressure, and (3) sintering the molded mixture at a temperature not lower than 600°C and not higher than 850°C, wherein the positive electrode active material includes lithium composite manganese oxide having a spinel structure whose primary particle diameter is not less than 0.05 μm and not greater than 10 μm forming an aggregate, and whose specific surface area measured by the BET method is not less than 0.2 m^2/g and not greater than 2 m^2/g .

Isoyama discloses a process of producing a non-aqueous electrolyte secondary cell. Isoyama does not disclose or suggest a method of producing a positive electrode active material for a non-aqueous electrolyte cell including sequential steps of (1) mixing ingredients of a lithium composite manganese oxide, (2) molding the mixture under pressure, and (3) sintering the molded mixture at a temperature not lower than 600°C and not higher than 850°C, wherein the positive electrode active material includes lithium composite manganese oxide having a spinel structure whose primary particle diameter is not less than 0.05 μm and not greater than 10 μm forming an aggregate, and whose specific surface area measured by the BET method is not less than 0.2 m^2/g and not greater than 2 m^2/g .

To overcome the rejection, the Examiner suggests that Applicants submit a declaration comparing the invention to the nearest prior art and proving that Isoyama

does not produce a cathode with a specific surface area within the desired range. See Office Action, page 8, lines 1-4. Applicants have enclosed herewith a Declaration under 37 C.F.R. § 1.132 providing evidence of the results of experiments comparing the claimed invention and the nearest prior art. Applicants request the Examiner also reconsider the Declaration filed on April 7, 2004, which describes, among other things, the commercial significance of the improved results of the present invention. The enclosed Declaration shows unexpected results over the prior art, and more specifically an unexpected difference between molding a mixture under pressure before sintering the mixture and sintering the mixture without first pressure molding the mixture. As stated in the Declaration, because the processes of the prior art also include sintering a mixture without first pressure molding the mixture, the comparative processes of the experiment described in the Declaration including sintering a mixture without first pressure molding the mixture illustrate that the particle diameters and specific surface areas of materials produced according to the prior art, including Isoyama, would be outside of the claimed desired ranges.

Because the reference does not disclose or suggest every element of the claim, the rejection is improper. Accordingly, Applicants respectfully request that the rejection be withdrawn.

Claims 26-28

Applicants respectfully request reconsideration of the rejection of claims 23-25 under 35 U.S.C. § 103(a) as being unpatentable over Isoyama in view of U.S. Patent No. 5,869,208 (Miyasaka). The rejection is improper because claims 26-28 depend from claim 23, which was improperly rejected as shown above, and the secondary reference does not provide or suggest the previously noted elements.

Claim 35

Claim 35 was not addressed in the Office Action. Instead, the Office Action addressed claims 31, 33, and 34, which were canceled in a previous amendment. If the Examiner wishes to reject claim 35, Applicants request the Examiner do so in a new Office Action having a three-month response period to provide Applicants a fair opportunity to reply. See MPEP § 706.02(j), which states that "it is important for an

examiner to properly communicate the basis for a rejection so that the issues can be identified early and the applicant can be given fair opportunity to reply.”

Conclusion

As Applicants believe the application is in condition for allowance, a favorable action and a Notice of Allowance are respectfully requested.

If the Examiner desires, Applicants welcome a telephone interview to expedite prosecution.

Respectfully submitted,

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